COURT'S ORDER WHETHER THE CASE IS OR IS NOT APPROVED FOR REPORTING

{Chapter VIII, Rule 32(2)(b)}

Description of the Case.

CRIMINAL APPEAL NO. 740 of 2001
(Old No. 2031/1984)

Vikram Singh & another .....Appellants

Versus

The State ....Opposite Party

Sri. M.S. Pal, Advocate assisted by Sri V.S. Pal and Sri Siddhartha Shah counsel for appellants.
Sri Prabhakar Joshi, Id. Brief holder and Sri M.A. Khan, Ld. Brief holder for the State

Approved for reporting.
~~Not approved for reporting~~.

Date: August 21, 2007

(Dharam Veer, J.)

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL
CRIMINAL APPEAL NO. 740 of 2001
(Old No. 2031/1984)

1. Vikram Singh S/o Dharam Singh
   R/o Village Sitali, Patti Askota, District-Pithoragarh.
2. Deb Singh S/o Havat Singh
   R/o Silli, Patti Talla Choketa, District- Almora.

....Appellants

Versus

The State **....Opposite Party**

Dated: August 21, 2007

Sri M.S. Pal Advocate assisted by Sri V.S. Pal and Sri. Siddhartha Shah counsel for appellants.
Sri Prabhakar Joshi, Id. Brief holder and Sri M.A. Khan, Ld. Brief holder for the State.

HON. DHARAM VEER, J.

This appeal, preferred under Section 374(2) of the Code of The Criminal Procedure, 1973 (hereinafter to be referred as Cr.P.C.), is directed against the judgment and order dated 10.07.1984 passed by Assistant Sessions Judge, Almora, in Session Trial No. 4/1984 State Vs. Vikram Singh & others under Sections 394/398 of the Indian Penal Code, 1860 *(hereinafter to be referred as* I.P.C.), in Sessions Trial No. 12/1984, State Vs. Deb Singh, under Sections 25/27 Arms Act, 1959 as well as in Session Trial No. 11/1984, State Vs. Vikram Singh, under Section 25/27 Arms Act, 1959 whereby the learned Assistant Sessions Judge has convicted the appellants under Section 394 I.P.C. and awarded sentence of 10 years R.I. each. They were also convicted under Section 398 I.P.C. and each of them was awarded sentence of 7 years R.I. Appellants were further convicted under Section 25 Indian Arms Act, 1959 and each of them was sentenced to two years R.I. They were further convicted under Section 27 Arms Act and each of them was sentenced to two years R.I. All these sentences were direct to run concurrently.

sten gun, the other with a knife and the rest two persons were armed with revolvers. When the Bank guard tried to stop them, one of the robbers gave a knife blow to him. The robbers immediately entered into the Bank and after pointing out their weapons towards the Manager and the employees of the Bank ordered them to bring out cash. The robber armed with knife assaulted Sri Brijesh Chandra Shah PW. 1 due to which he sustained knife injury on his finger. Then the Bank guard raised an alarm. On hearing this alarm, Sri Satish Chandra PW. 5 and Bhuwan Chandra P.W. 4 rushed to the bank and they caught hold of the man armed with a sten gun from behind. On this, the employees of the Bank also helped them and the dacoits along with the employees of the Bank came out of the bank in a scuffle. Meanwhile, several persons of the market, constables of police and revenue police collected outside the Bank, who were armed with lathis and Dandas. They started to beat the robbers with lathi and Danda and arrested two robbers on spot. The other two robbers were successful in running away from the place of occurrence. The arrested robbers disclosed their names as Deb Singh and Vikram Singh (appellants). They also disclosed the names of the robbers who had fled away from the scene of occurrence as Dharam Singh and Diwan Singh. One Rampuri knife Ex. 10 was recovered from the appellant Deb Singh, 20 live cartridges of sten gun were also recovered from the right pocket of his Pant. One sten gun along with loaded magazine containing 10 cartridges was also recovered from the appellant Vikram Singh. The appellant Vikram Singh was also found in possession of a bag Ex.9 Hanging from his shoulder. On search of this bag, one artificial revolver Ex. 7, two black clothes Exs.5 and 6, one undershirt Ex.8 and 28 cartridges of sten gun Ex.4/1 to 4/28

searched the appellant Vikram Singh and found Rs.42.75 in his pocket and prepared a memo, that memo is Ex.Ka. 10. Ex.Ka.2 is the memo of the items recovered from Vikram Singh which was later on handed over to Narayan Singh, Patwari Ex.Ka.3 is the memo of the items recovered form Deb Singh/appellant which later on was handed over to the Patwari, Narayan Singh. The Bank Manager also handed over the sten gun snatched from appellant Vikram Singh along with loaded magazine to Patwari. The bag containing artificial revolvers, two black clothes, one baniyan and 28 cartridges of stun gun along with Rampuri knife Ex.10 and also 20 cartridges of the sten gun snatched from appellant Deb Singh were also given to the Patwari. He prepared two memos Ex.Ka.2 and Ex.Ka.3 in presence of the witnesses. He sealed the recovered articles on the spot. A pair of shoes Ex.14 was also handed over to the Patwari, who prepared recovery memo Ex.Ka.4. He accompanied the Bank guard and Bank manager to hospital in order to give them medical treatment. On the scene of occurrence, the District magistrate, Almora and S.P. Almora, also reached. P.W. 6 Patwari Danya, Narayan Singh sent appellants Vikram Singh to hospital for medical treatment along with report Ex.Ka. 13. In the hospital, Dr. Dinesh Kumar, Medical Officer, Allopathic Dispensary, Danya, PW. 3 examined the injury of Udai Singh PW. 2 at 2.55 P.M. and prepared the injury report Ex.Ka.5. On the same day at 3.30 P.M. he has examined the injuries of Satish Chandra Pant, PW.5 and prepared the injury report, that is Ex.Ka.8. On the same day i.e. on 7.10.1983 he has examined an unknown person who later on was found to be Vikram Singh appellant and also prepared the injury report Ex.Ka.9-A. On the same day at 3:00 P.M., he has examined Brijesh Chandra Shah, PW. 1 and prepared the injury report Ex.Ka. 6. He has also

there vide G.D. report No.21, copy of G.D. is Ex.Ka. 16. On 8.10.1983, Almora, Police went into the search of two persons, who were alleged to have absconded from the place of occurrence. Sri Madho Singh Pal, Inspector, went to the place of occurrence in the morning of 8.10.1983. He collected Satish Chandra Pant PW.5 and other persons and started the search of accused. When the crowd reached in village Dhyari, they saw one person going on foot towards Pithoragarh and that person was arrested by them. This person was recognized as one of the robbers and on interrogation, he told his name as Dharam Singh. Accused Dharam Singh was brought to the police station, Almora, vide G.D. report No.36 dated 8.10.1983, copy of G.D. is Ex.Ka. 17 On 12.10.1983, the blood stained clothes of PW. 2 Udai Singh, Chowkidar (Guard) were taken into police custody and a Fard Ex.Ka. 19 was prepared. The investigation of the case was later on handed over to the C.I.D. vide order dated 14.10.1983 i.e. Ex.Ka.26. Ex.Ka.21 is the sanction of District Magistrate for prosecution of the appellant Vikram Singh u/s 25/27 Arms Act and Ex.Ka.22 is the sanction for prosecution of the appellant Deb Singh u/s 25/27 Arms Act. Ex.Ka.23 is the charge sheet submitted against the appellants Vikram Singh, Deb Singh and Dharam Singh under Sections 394/398 of I.P.C. Ex.Ka-24 is the charge sheet against the appellant Vikram Singh under Sections 25/27 Arms Act. Ex.Ka-25 is the charge sheet against the appellant Deb Singh under Sections 25/27 Arms Act.

5. After that the case was committed to the court of Sessions by the order of “Chief Judicial Magistrate, Almora, on 03.02.1984 u/s 209 Cr.P.C. after complying with the provisions of Section 207 Cr.P.C.

Singh was also framed under Section 25/27 Indian Arms Act on 25.5.1984. The charge was also explained to him who pleaded not guilty and claimed to be tried.

7. To prove its case, the prosecution has examined PW. 1 Brijesh Chandra Sah who was the complainant witness, PW. 2 Udai Singh who was the guard and injured witness, PW. 3 Dr. Dinesh Kumar, Medical Officer, PW. 4 Bhuwan Chandra, who is the eye witness, PW. 5 Satish Chandra Pannt, who is also the eye witness, PW. 6 Narayan Singh, Patwari, PW. 7 Constable Dinesh Chandra, PW. 8 Pratap Singh, PW. 9 Constable, Govind Ballbah and PW. 10 Head Constable, Nityanand Bhatt.

8. After that the appellants were examined under Section 313 Cr.P.C. They have denied the allegations made against them. In defence appellants and accused Dharam Singh have not produced any oral evidence but they had filed some documentary evidence that is Ex.Kh. 1 Ex.Kh2, Ex.Kh. 3 and Ex.Kh.4.

9. After appreciating the evidence on record and after hearing learned counsel for the parties, the Assistant Sessions Judge, Almora vide his judgment and order dated 10.07.1984, convicted the appellants under Section 394 and awarded sentence of 10 years R.I. They were also convicted under Section 398 and awarded sentence for 7 years R.I. They were further convicted under Section 25 of Arms Act and were sentence to 2 years R.I. Appellants were further convicted under Section 27 Arms Act and were awarded sentence for 2 years R.I. All the sentences were directed to run concurrently. However, accused Dharam Singh was acquitted for the charge leveled against them under Section

charge in State Bank, Danya on 30.09.1983 and he took the charge form Ummed Singh who was on leave and he was posted there up to 24.10.1983. He has further stated that on 7.10.1983 at about 1:15 P.M., he was working in the Bank along with his staff Naresh Chandra Dutta, S.P. Pathak, Chandan Singh Rawat, Mahesh Chandra Pandey, and on the gate, Udai Singh guard (Chowkidar) was standing with a spear for the protection of Bank. Then four persons armed with weapons entered into the Bank. One robber was armed with sten gun, second was armed with knife and rest of the two were armed with revolvers. On the gate, when the guard Udai Singh tried to stop them, then the person who had knife in his hand caused the injury by knife to Udai Singh. After causing the injury to Udai Singh, all the four robbers had entered into the Bank and asked him to take out the cash of the Bank and to give them. After stating that, the person who had knife in his hand has attacked him. He has tried to save him but he got the injury of knife on his finger of the hand. In the meanwhile, guard of the Bank made a noise, at this Bhuwan Chand and Satish Chand had reached the Bank from their shops. Satish Chand had caught the person who had sten gun in his hand and he had snatched sten gun and one bag from him. Bhuwan Chand had caught the person who had knife in his hand and he also snatched knife form him. Meanwhile, the staff persons have also started to beat the robbers, when all the four miscreants had tried to run away then two robbers had run away form there and two were caught on the spot. When the two robbers were caught on the spot, then their names were asked, one disclosed his name Deb Singh, son of Hayat Singh, resident of Village Sitoli Patti, Choket, District Almora and second one had disclosed his name as Vikram Singh, son of Dharam Singh,

police personnel and the revenue police had also reached there having lathis and dandas in their hands. The appellants had got the injury at the time when they were caught. From, the possession of Deb Singh/Appellant, a knife was recovered and except knife, 20 cartridges of the Sten gun were also recovered from the right pocket of his Pant. From the possession of the appellant Vikram Singh, one loaded sten gun with 10 cartridges in a magazine were recovered and also two black clothes, one cotton undershirt, one artificial pistol and 28 cartridges of the sten gun were recovered from the bag which was hanging on his shoulder. These persons were detained in the Bank being tide up with a rope. The written report of the above said incident was given by him to Patwari, that report is Ex.Ka. 1. The recovered items were opened from the sealed condition. He has identified the sten gun which was recovered from the appellant Vikram Singh, Ex.1. He has also identified the Magazine with 10 cartridges that is Ex.2. The cartridges which were in the Magazine were 10 in numbers, those were Ex.3/1 to Ex. 3/10. The other 28 cartridges which were recovered from Vikram Singh, that are Ex.Nos.4/1 to 4/28 and further two black clothes, artificial revolver and undershirt were also recovered from the bag, that are Exs.5, 6, 7, 8 and Ex.9 was the bag (Jhola). The knife by which Deb Singh had attacked on him is Ex.10 and the twenty cartridges which were recovered from the Pant of Deb Singh was also before him in the court, that are Exs. 11/1 to 11/20. All the above said items were handed over to the Patwari on the spot and Fards were prepared, those Fards are Ex.Ka.2. Ex.Ka.3 and Ex.Ka.4. The other appellant Dharam Singh was also arrested. He has identified that appellant in the court who was armed with the revolver at the time of occurrence. He has further stated that he was also medically examined. This witness

that day at 1:15 P.M., he was working as a Guard on duty and he had got the spear with him. Four persons came on the gate along with a bag and asked him that they want to open their accounts. He told them the place for opening their accounts. While the appellants entering inside one person had attacked on him by knife, for that, he got the injury. He made a noise with the sound *(Chour aa gayai hai, mai mara gaya).* In the meanwhile, all the four robbers had entered into the Bank and pointed out their weapons towards the staff, which were working in the Bank. One person was armed with the sten gun, other was armed with the knife, the third one was armed with pistol, and what was in the possession of the fourth person he could not see. He continued to make noise regularly. After hearing the noise, Satish and Bhuwan chand had come into the Bank. They have caught the two robbers inside the Bank who had the sten gun and knife in their hands. In the meanwhile, all the staff persons had also attacked on the robbers. The two robbers had run away, one person had run away towards Hospital and one had run towards market. In the meanwhile, the public personnel had also reached there and the two robbers were caught with the help of the public near the door inside the bank. When the robbers had disclosed their names, then he was admitted to the Hospital. He has identified the knife Ex. 10 and he has stated that the robbers had caused him injury with the knife. He has also stated that the person who caused him the knife injury, he can identify him. Pointing out towards the appellant Deb Singh in the court, he had stated that he was the same person who had caused him the injury with knife. Appellant Deb Singh was Baparda at that time and only half portion of his eyes was opened. In the Danya Hospital he was medically examined and he was referred to the Almora, Hospital, in the

Dispensary, Danya. On that day at 2:55 P.M., he had examined Udai Singh who was brought to him by Narayan Singh Mehta, Patwari and prepared the injury report, i.e. Ex.Ka-5. The following injuries he found in his body:

1. *An Incised wound 2.5 cm x 1x1cm at the outer side of left thigh 13 cm below the left ithae bone.*
2. *Inflammating Swelling of left upper thigh.*

He has stated that the injury no. 1 could be cased by the sharp edged weapon and the injuries were simple and within 6 hours.

On the same day, he has examined Brijesh Chandra Shah, son of Gurudas Shah, who was brought to him by Patwari Narayan Singh Mehta at 3:00 P.M. He has prepared the injury report i.e. Ex.Ka-6 and he found the following injury on his body:-

An Incised wound 1cm x 0.5 at the left hand of middle finger on the upper 1/3rd on Palmar surface.

The doctor has stated that the injuries could possibly be caused by a sharp edged weapon. Injuries were simple and could be caused within 6 hours.

On the same day i.e. on 7.10.1983 at 3:15 P.M., he has also medically examined Bhuwan Chandra and prepared the injury report Ex.Ka-7 He has found the following injures on his body:

1. *An abrasion with contusion of blusih red colour 3 cm x 1 cm at the top of left shoulder.*
2. *A contusion reddish blue in colour 4 cm x 2cm at the right side back. 3cm below the right shoulder blade.*
3. *A contusion 4 cm x 2 cm at the left thigh outer side 7cm below illac bone.*
4. *A contusion reddish blue on the left side back 3 cm x 1cm, 4 cm above the lower end of shoulder blade.*
5. *A contusion 4 cm x 2 cm at the back of neck.*
6. *A contusion 4 cm x 2cm at the left lower leg, 4 cm below the left knee joints.*

He has further stated that all the injuries of the above said injured were simple in nature and all are within 6 hours and could be caused by the some hard blunt object.

6. *A contusion reddish blue in colour, 3 cm x 1 cm at the right thigh.*

He has further stated that all the injuries were simple in nature. Injury no. 1 could be caused by the friction and rest of the injuries could be caused by some hard blunt object. All the injuries were within 6 hours.

On the same day in the evening at 6:00 P.M., he has examined an unknown person (Vikram Singh). He prepared injury report Ex.Ka-9(a) and found the following injuries on his body:

1. *A lacerated wound 3 cm x 1 cm at the left upper eyebrow.*
2. *A lacerated wound 3 cm x 1cm at the left side head.*
3. *An abrasion 1 cm x 1 cm at the right index finger on dorsal aspect.*
4. *Echymosis at the left eye.*
5. *A lacerated wound at the right leg, 10 cm below the knee joint.*

He has further stated the injuries were simple in nature and within 6 hours at the time of the medical examination. He has further stated that the Paper No.3Ka/24 was not sent along with patient. He has received the paper when he had completed the examination of the patient and the injuries were recorded in the accidental register. He has further stated that he had received this document on 7.10.1983, but by mistake in place of '7' he had written '10' in that document. He has further stated that the injuries to this person could possibly be caused on 7.10.1983 between 1:15 to 1:30 P.M.

In the cross examination, this witness has stated that the person who was examined by him as an unknown person, was semi-conscious when he was taken before him. He has further stated that the S.P. Pithoragarh had reached at the hospital between 6:15 P.M. to 6:30 P.M. in the evening and he had identified that person as Vikram Singh.

14. PW. 4 is the Bhuwan Chandra who has stated that he was a Shopkeeper. He had a shop near the State Bank, Danya and on 7.10.1983 at about 1:15 P.M., he was sitting in his own shop. His

was with knife and rest of the two appellants were armed with the revolver and the knife was opened. They were pointing out their weapons towards the Manager and staff of the Bank. His brother Satish Chandra had caught the person who was holding sten gun in his hand and snatched the sten gun from him. He had caught the person who had knife in his hand and snatched the knife from him. In the meanwhile, in the scuffle the staff of the Bank has also involved themselves in catching the robbers. The public personnel and police personnel had also reached there .The two robbers had run away and the two were caught with the help of the police, public personnel and Bank staff. In that incident, he and his brother received the injuries. The robbers who were caught, one who had a knife in his hand disclosed his name Deb Singh and other who had sten gun in his hand had told his name Vikram Singh. These two persons who were arrested on the spot had also disclosed the name of the persons who had run away from spot, namely Dharam Singh and Dewan Singh. The knife and the sten gun were handed over by him and his brother to the Bank employees. Next day, another robber Dharam Singh was arrested by the police with the help of the public, his brother and revenue police. He has identified that person who was present at the time of the occurrence amongst the four robbers. He had identified the appellants and the other accused Dharm Singh in the court. He was medically examined by the doctor in the Hospital and he has further stated that there was one Traffic Police Chowki in Danya. After seeing the knife Ex.10, he has stated that it was the same knife which he had snatched from the appellant. The appellant and other co-accused Dharam Singh were identified by this witness in the court. This witness was cross-examined at length but nothing has come out, which may create any doubt in his

his brother Bhuwan Chandra had run towards the Bank. When they reached at the gate of Bank he saw Udai Singh, Bank Guard was crying and blood was oozing from his thigh and the four persons were standing inside the Bank in front of the Bank employees and manager. One was armed with the sten gun, one with the open knife and rest of the two robbers were armed with the revolvers. They were pointing out their weapons to the staff and the Manager of the Bank and also told them to give all the cash and the key of the cash. He has identified the sten gun Ex. 1 and knife Ex. 10 and stated that it was the same sten gun and knife which the appellants were pointing out at the time of the incident. He had caught the person who had the sten gun in his hand and his brother had caught the person who had knife in his hand. He has snatched the sten gun from his hand and his brother has snatched the knife from another appellant. At the time of the snatching, the Bank employees had also come to help them. In the scuffle between them and robbers, they reached near the gate of the Bank. The people from the outside had also reached in the Bank. Then all have started to beat the robbers. Two robbers were caught by the police and the staff of the Bank. The Patwari had also reached on the site of the occurrence. The recovered items and the appellants were handed over to the Patwari. He had also got injuries in the above said incident and he was medically examined in the Danya, Hospital. Next day on 8.10.1983, other accused Dharam Singh was arrested by the Police. He had identified the appellants and other co-accused in the court. The Patwari had prepared the Fard for the sten gun, knife, bag (Jhola) and clothes etc the other materials which were taken by him in his possession and the Fard was prepared. He had also signed on the Fards Ex.Ka.2. Ex.Ka.3 and Ex. Ka.4 and

Danya. He heard the noise from Danya market and run away toward the noise. He reached the State Bank where many other persons were standing there. P.W. 1 Bank Manager, Brijesh Chandra Shah had given him a written a report, i.e. Ex.Ka.1. On the basis of this report, he had prepared the chick F.I.R. at 1:30 P.M. As per the report of the complainant the chick F.I.R. Ex.Ka.9 was prepared. After registering the case he has started the investigation. Appellants namely Deb Singh and Vikram Singh were handed over to him and the search of these two appellants was done and in the search, from the pocket of Vikram Singh, Rs. 42.75 were recovered. He prepared two *Fards* in his hand writing i.e. Ex.Ka. 10 and Ex.Ka. 11 on the spot before the witnesses Brijesh Chandra Sah, Branch Manager, State Bank, Danya and he had given him sten gun loaded with magazine with 10 live cartridges, one bag in which there was one duplicate revolver, pieces of two black clothes, one cotton baniyan and 28 sten gun live cartridges which were snatched from the appellant Vikram Singh. He has also recovered one knife *Rampuri*, 20 stun gun live cartridges, which were also snatched from appellant Deb Singh and were given to him and two Fards were prepared on the spot i.e. Ex.Ka.2 and Ex.Ka.3. He had also signed on these Fards, which were written by him. The above said items were sealed on the spot and the above said articles were marked as Ex. 1, Ex.2, Ex.5 Ex.6, Ex. 7, Ex.8, Ex.9, Ex.10 and Ex.3/1, Ex.3/10, Ex.4/1, Ex.4/28, Ex. 11/1, Ex. 11/20. At the same time, one pair of shoes was also given to him, which was marked as Ex. 14. The Fard was also prepared on the spot before the witness i.e. Ex.Ka. 4. That recovered material (maal) was also sealed on the spot. For examining the injuries of Bank Guard and Bank Manager, he had taken them to Hospital. Satish Chandra and Bhuwan Chandra

Ex.Ka. 13, the Medical Officer had completed the medical examination of the appellant Vikram Singh. He had identified the appellants Vikram Singh and Deb Singh in the court. On the same day, District Magistrate had transferred the investigation of this case to the regular police. He had also prepared the site plan on the spot i.e. Ex.Ka. 14.

17. PW. 7 is the Constable Dinesh Chandra. He had stated in his statement that in October 1983 he was posted in Almora as a Constable Clerk. On 7.10.1983 at about 2:00 P.M, he had telephonically got the message in police station that in State Bank, Danya the dacoity had taken place and for that police help was required. On this information, C.I., Madho Singh Pal along with other police employees had moved on the place of occurrence from Police Station, Almora. The entry was made in the G.D. by report no.22 on 7.10.1983 at about 14:00 o'clock. They copy of that G.D. is paper no.3Ka/5 Ex.Ka. 15. On 8.10.1983, appellants Deb Singh and Vikram Singh were taken to Almora, Police Station. The entry was made in the G.D. No.21 at about 11.30 A.M., the copy of the G.D. is paper no.3Ka/4, i.e. Ex.Ka.16. On 8.10.1983 another accused Dharam Singh was also taken to Almora Police Station. The entry was made in the G.D. register no.36 on 8.10.1983 at 18:05 P.M., the copy of the G.D. paper no.3Ka/12 Ex.Ka.17. On 8.10.1983 at 18:20 P.M., Madhao Singh Pal C.I. Almora had admitted the material in sealed condition. Seal of specimen in the Police Station in Maal Khana (recovery room) was kept in sealed condition along with specimen of seal. The entry was made in the G.D. no.39, the copy of the G.D. is paper no. 3Ka/18 i.e. Ex.Ka. 18and recovery memo of blood stained clothes Ex.Ka. 19 was also proved by him. He has also identified

No. 12/1984, which were field by Onkar Singh and that were Ex.Ka.23, Ex.Ka. 24 and Ex.Ka.25. He has also identified the signatures of Daya Shankar Singh on paper no.3Ka/41, Ex.Ka.26.

19. PW. 9 Constable Govind Ballabh, who has filed the affidavit, has stated that on 22.10.1983 he has deposited the recovered items of case (Maal of Mukadma) in six bundles, in sealed condition in the Storehouse (Maal Khana) Sadar. He has stated that up to when the recovered items (maal) were in his possession nobody was allowed to see and open that, which was deposited in sealed condition.

20. P.W. 10 Constable Nityanad Bhatt, who has filed the affidavit, has stated that the recovered items (maal) in six bundles in sealed condition was filed in Storehouse (maal khan) Almora and up to when the items (maal) were remained in the Storehouse (maal khana), that were in the sealed condition. Nobody was allowed to see and touch that. He had also filed a certified copy of the register of Storehouse (maal khana).

21. After that the statements of the appellants were recorded under Section 313 Cr.P.C. They have denied the allegation made against them. The appellant Vikram Singh had stated in his statement that in the scuffle between Bhuwan Chandra, Satish Chandra Deb Singh and him in the hotel, he and Deb Singh were beaten by Bhuwan Chandra and Satish Chandra. For their defence, they have caused injuries to Bhuwan Chandra and Satish Chandra in the hotel. After that, they were handed over to Patwari Danya by Bhuwan Chandra and Satish Chandra from the hotel. He has further stated that a false case was registered against him with the help of Bank employees. They did not

Ex. Kha. 4 is the injury report of the appellant Deb Singh, that report was prepared when he was examined on 8.10.1983 by the Medical Officer of District Jail, Almora.

22. Sri M.S. Pal, learned senior counsel for the appellants has argued that the F.I.R. is ante-timed. He has submitted that the copy of the G.D. in which the entry of the chick F.I.R. was made, was not filed. On the basis of the evidence, the F.I.R. said to be lodged at 1:30 P.M. is not possible. From a perusal of the evidence, it is clear that the F.I.R. Ex.Ka.1 was lodged by the PW.1 Brijesh Chandra, Branch Manager, State Bank Danya, and the chick F.I.R. was prepared by PW.6 Narayan Singh Patwari, Danya. The F.I.R. was lodged on 7.10.1983 at 1:30 P.M. and the incident was said to be taken place at 1:15 P.M. on 7.10.1983. PW. 1 Brijesh Chandra Sah, who had categorically stated in his statement that the Patwari had come in the Bank. PW.6 Patwari, Narayan Singh had also stated in his statement that he was in Ukaltok at Danya and after hearing the noise from the market, he had reached on the spot from where the noise was coming. He reached the Bank and then the manager had given him the F.I.R. and on the basis of this F.I.R., he had prepared a chick F.I.R., EX.Ka.9. From the statement of PW.7 Constable Dinesh Chandra, it is clear that he had received the information at 2:00 P.M. on 7.10.1983 by telephone in Almora Police Station that Bank dacoity had taken place in Danya. On this information, S.I. Madho Singh Pal along with the police party had moved to Danya and reached on the spot. The District magistrate and Superintendent of Police had also reached on the spot. On the spot, District Magistrate had passed an order to transfer the investigation to the regular police. After that Narayan Singh, Patwari had transferred

In the statement of Dr. Dinesh Kumar, Medical Officer it has been stated in cross-examination that the S.P. Pithoragarh had reached there between 6:15 to 6:30 P.M. in the evening and he had identified Vikram Singh. On the basis of the statement, learned counsel for the appellants has stated that appellant Vikram Singh was not caught on the spot at the time of the occurrence and the Police later on arrested him. This argument of learned senior counsel has got no force for the reason that PW.3 Dr. Dinesh Kumar has stated in his statement that paper no.3Ka/24 was not along with the patient. He has also stated that when he had received the paper no.3Ka/24, the patient was examined before that time and his injuries were recorded in the Accidental Register. He has also stated that paper no.3Ka/24 has been received on 7.10.1983 but by mistake in place of '7', he had written '10' in that letter. Hence, it is clear that Vikram Singh was sent to doctor by the Patwari by paper no.3Ka/24, which is Ex.Ka.13 on record. Moreover, Vikram Singh was medically examined by the doctor and he has found the injuries on his body as quoted above. On 8.10.1983 at 6:00 P.M., Vikram Singh was also examined by the Medical Officer of Jail Superintendent and doctor had also found the injuries on his body and in the injury report Ex.Kha.3, it was stated that the duration of injuries was within 24-72 hours. From a perusal of both the injury reports, it is proved that these injures could be possible at 1:15 P.M. on 7.10.1983. Furthermore, there are categorical statements of PW. 1 Brijesh Chandra Shah and PW.2 Udai Singh that appellant Vikram Singh was armed with sten gun and he was arrested by Satish Chandra Pant PW.5, bank staff and other public persons while he was armed with sten gun being loaded with 10 live cartridges, two black clothes, one cotton baniyan, one duplicate

Medical Officer i.e. Paper No. 3Ka/24 which was also in his handwriting. When he reached hospital along with letter Ex. Ka-13 i.e. paper no. 3 Ka/24, the medical officer has completed the medical examination of the appellant Vikram Singh. He had identified Vikram Singh in the court also. Thus, from the discussion made above, it is clear that appellant Vikram Singh was caught hold in the bank at 1:15 P.M. on 7.10.1983 when he entered in the bank along with accused Deb Singh and Dharam Singh and one other person in order to commit the robbery being armed with a sten gun being loaded with magazine of 10 live cartridges and in his bag, 28 live cartridges of sten gun, two black clothes, one cotton undershirt and one duplicate revolver were also found. In this way, the argument advanced by learned senior counsel is not tenable and not acceptable.

25. Learned senior counsel for the appellants has further submitted that no recovery memo of the recovered items from the possession of appellants was prepared. This argument of learned senior counsel is also misconceived and has no force. The documents Ex.Ka.2 and Ex.Ka. 3 are the memos which show that the above said items were received from the possession of the appellants Vikram Singh and Deb Singh and they were handed over to the Patwari Narayan Singh on 7.10.1983 at the time when they were caught by the witnesses and the public.

26. Learend counsel for the appellants has further submitted that the appellant Deb Singh was not examined when he was caught by Bhuwan Chandra PW.4, bank staff and other public persons on the spot on 7.10.1983 at 1:15 P.M. He later on was medically examined by the Medical Officer of Jail on 8.10.1983

27. From the evidence discussed above, it is proved that on 7.10.1983 at about 1:15 P.M., appellants Vikram Singh and Deb Singh were caught hold in the Bank by PW.5 Satish Chandra Pant and PW. 4 Bhuwan Chandra Pant and also with the help of bank staff and other public person. It is also proved that these two appellants along with other two persons entered into the Bank and the appellant Vikram Singh had pointed out his sten gun towards the Bank staff and appellant Deb Singh pointed out his knife towards them and asked the Bank employees to give them the cash money. Appellant Deb Singh had also caused the injury to Branch Manager, Briejesh Chandra Shah by knife and he has also caused injury by knife to Bank Guard PW. 2 Udai Singh. On raising an alarm by P.W.2 Udai Singh, PW. 4 Bhuwan Chandra and PW. 5 Satish Chandra reached on the spot and caught the appellants Vikram Singh and Deb Singh from the place of occurrence and with the help of other Bank employees and public persons.

28. Thus, in view of the discussions made above, it is clear that the statements of P.W.1 Brijesh Chandra Shah, P.W.2 Udai Singh, P.W.4 Bhuwan Chandra and P.W.5 Satish Chandra are corroborated by the medical evidence of P.W.3 Dr. Dinesh Kumar as well as from the injuries caused to the appellants Vikram Singh and Deb Singh and the witnesses namely PW. 1 Brijesh Chandra Shah, PW. 2 Udai Singh, P.W.4 Bhuwan Chandra, PW.5 Satish Chandra Pant. These injuries also show the presence of appellants at the time of the occurrence in the bank. It is also proved beyond reasonable doubt from the aforesaid discussion that on 7.10.1983 at 1:15 P.M. in the Danya Branch of State Bank of India, Distt. Almora, these appellants Vikram Singh and Deb Singh along with other companions Dharam Singh and one other person had tried

Chandra and he himself had got the injuries. He has also stated that a false case was registered against him with the help of bank employees. This fact itself shows his presence on the day, time and place of occurrence. There is no evidence on record that there was any enmity of P.W.1 Brijesh Chandra Sah, P.W.2 Udai Singh, P.W.4 Bhuwan chandra and P.W.5 Satish Chandra Pant with these appellants Vikram Singh and Deb Singh. Thus, the defence taken by the appellants u/s 313 of Cr.P.C. is not tenable and it is an after thought story, which is not supported by any evidence. The sanction for prosecuting these appellants' u/s 25 and 27 of Arms Act was also taken from the District Magistrate, Almora i.e. Ex.Ka-21 of appellant Vikram Singh and Ex.Ka-22 of appellant Deb Singh, which is duly proved by the prosecution. For that offence u/s 25/27 of Arms Act, the appellants had got no valid license and the recovery of these weapons is well proved as per the evidence discussed above.

29. In view of the discussions made above, I find that the prosecution has been successful in order to prove beyond reasonable doubt the offence under Section 394/398 I.P.C. and under Sections 25/27 Arms Act against the appellants Vikram Singh and Deb Singh is well proved. The conviction and sentence awarded by learned Assistant Sessions Judge, Almora to the appellants for 10 years R.I. each under Section 394 I.P.C. is justified. The conviction and sentence of the appellants under Section 398 I.P.C. for 7 years each is also justified. The conviction and sentence of the appellants under Section 25 Arms Act for 2 years R.I. each is also appears to be justified. The conviction and sentence of the appellants under Section 27 Arms Act for 2 years R.I. each is also perfectly justified. Accordingly, all the sentences